

Appl. No. 10/821,357  
Resp. dated November 29, 2008  
Reply to Final Office Action of May 29, 2008

### **REMARKS**

Claims 17-33 remain in this application. No claims have been amended, added or canceled by this amendment.

#### **Claim Rejections – 35 U.S.C. § 103(a):**

Claims 17, 19-25, and 31-32 stand rejected under 35 USC 103 as allegedly being unpatentable over Pahl et al (hereinafter PAHL) in view of Tsuzuki et al (hereinafter TSUZUKI).

Claims 18, 26-28, and 33 stand rejected under 35 USC 103 as allegedly being unpatentable over PAHL in view of TSUZUKI further in view of Onishi et al (hereinafter ONISHI).

Claims 29 stands rejected under 35 USC 103 as allegedly being unpatentable over PAHL in view of TSUZUKI further in view of Bashir et al (hereinafter BASHIR).

Claims 30 stands rejected under 35 USC 103 as allegedly being unpatentable over PAHL in view of TSUZUKI further in view of Orcutt et al (hereinafter ORCUTT).

To establish a case of *prima facie* obviousness of a claimed invention, all claim features must be taught or suggested by the prior art. *In re Royka*, 490 F.2d. 981, 180 USPQ 580 (CCPA 1974); MPEP 2143.03. Obviousness cannot be established by combining or modifying the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion or incentive to do so. *In re Bond*, 910 F.2d. 81, 834, 15 USPQ 2d. 1568 (Fed Cir. 1990).

As acknowledged by the Examiner on page 2 of the office action "Pahl et al. does not disclose expressly that the sealing structure hermetically seals the active area or that the self-supporting structure adjoins the electrical contact areas of the transducer structures."

The Examiner states on page 3 of the office action "Tsuzuki et al. teaches a SAW device in which the active area is hermetically sealed."

A U.S. patent is a prior art reference as of its filing date. *In re Land*, 368 F.2d. 866, 151 USPQ 621, 632 (C.C.P.A. 1966).

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TSUZUKI has a filing date of December 10, 2002. Although TSUZUKI claims priority to an earlier filed Japanese patent application, a U.S. application is not effective on the filing date of the earlier-filed application when the earlier application is a foreign patent application under §119. *In re Hilmer*, 359 F.2d. 859, 149 USPQ 480, 500 (C.C.P.A. 1966).

The present application is a divisional application of U.S. Patent Application No. 10/231,356, "Seal for Surface Acoustic Wave Devices," filed on August 28, 2002.

Thus, Applicants submit that TSUZUKI is not prior art as to the present application.

Moreover, absent TSUZUKI the Examiner has not alleged any of the other cited references make-up for the deficiency in PAHL.

Accordingly, applicants request the Examiner withdraw the finality of the rejection, and allow claims 17-33 as previously presented.

#### RESERVATION OF RIGHTS

In the interest of clarity and brevity, Applicant may not have addressed every assertion made in the Office Action. Applicant's silence regarding any such assertion does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record is relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

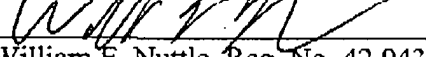
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**CONCLUSION**

Payment is enclosed for the extension of time and it is believed no additional fees are required for filing this amendment; however, the Commissioner is authorized to charge any additional fees which may be required, or credit any overpayment, to William E. Nuttle, Deposit Account No. 50-3467.

Respectfully submitted,  
Gregory D. Miller, et al.

Dated: November 29, 2008

By:   
William E. Nuttle, Reg. No. 42,943  
Attorney for the Applicant(s)